

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Verizon North Inc., Verizon South Inc., and NPCR, Inc., d/b/a Nextel Partners	:	
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Joint Petition of Verizon North Inc., Verizon South Inc. and NPCR, Inc., d/b/a Nextel Partners for Approval Pursuant to 47 U.S.C. §§252(a)(1) and 252(e), for an Agreement Supplementing Adopted Terms of an Interconnection Agreement.	:	02-0259
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ORDER

By the Commission:

I. PROCEDURAL HISTORY

On April 12, 2002, Verizon North Inc., Verizon South Inc. (collectively, "Verizon") and NPCR, Inc., d/b/a Nextel Partners ("NPCR") (Verizon and NPCR are referred to collectively as "Petitioners") filed with the Illinois Commerce Commission ("Commission") a verified joint petition seeking the Commission's approval of Amendment No. 1 ("Amendment") dated June 14, 2001, to their Interconnection Agreement ("Agreement"), pursuant to Sections 252(a)(1) and 252(e) of the federal Telecommunications Act of 1996 ("Telecommunications Act"), 47 U.S.C. 151 et seq. The Amendment was filed with the joint petition and supported by the verified statement of James R. Hargrave, Assistant Vice President-Public Policy & External Affairs for Verizon.

Pursuant to due notice, this matter came on for hearing before a duly authorized Hearing Examiner of the Commission at its offices in Springfield, Illinois on January 30, 2002. Appearances were entered on behalf of Verizon, NPCR and Commission Staff ("Staff"). Staff submitted the verified statement of Qin Liu of the Commission's Telecommunications Division. In her statement, Ms. Liu recommended approval of the Amendment. At the conclusion of the hearing, the record was marked "Heard and Taken."

II. SECTION 252 OF THE TELECOMMUNICATIONS ACT

Section 252(a)(1) of the Act allows parties to enter into negotiated agreements regarding requests for interconnection, services, or network elements pursuant to

Section 251. Petitioners have negotiated such an Agreement, and have submitted it for approval in this proceeding.

Section 252(a) of the Act provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." Section 252(e)(1) provides that a State commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the State commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity."

Section 252(e)(4) provides that the agreement shall be deemed approved if the State commission fails to act within 90 days after submission by the parties. This provision further states that "[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." Section 252(e)(5) provides for preemption by the Federal Communications Commission if a State commission fails to carry out its responsibility and Section 252(e)(6) provides that any party aggrieved by a State commission's determination on a negotiated agreement may bring an action in an appropriate Federal district court.

Section 252(h) requires a State commission to make a copy of each agreement approved under subsection (e) "available for public inspection and copying within 10 days after the agreement or statement is approved." Section 252(i) requires a local exchange carrier to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

III. THE AMENDMENT

The Amendment between Verizon and NPCR was arrived at through voluntary negotiations. The Amendment reflects changes in the Federal regulations. In its April 18, 2001 Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, FCC 01-0131, CC Docket Nos. 96-98 and 99-68 ("ISP Order"), the Federal Communications Commission ("FCC") determined that Internet traffic is not subject to reciprocal compensation under Section 251(b)(5) of the Telecommunications Act, but exercised its authority under Section 201 of that Act to establish a transitional plan for intercarrier compensation for Internet traffic. Under the transitional plan, the incumbent local exchange carriers must exchange both the Internet traffic and Section 251(b)(5) traffic at the same rates, either at the rate caps established by the FCC in the ISP Order or at the state-approved or state-arbitrated reciprocal compensation rates. In accordance with the terms of the ISP Order, Verizon

has elected to offer an optional reciprocal compensation rate plan for traffic subject to Section 251(b)(5), under which such traffic exchanged between Verizon and a local exchange carrier or CRMS provider in a given state will be subject to compensation at the same rate applicable to intercarrier compensation for Internet traffic in that state. Pursuant to the Amendment, NPCR has elected to accept the optional reciprocal compensation rate plan offered by Verizon for traffic subject to Section 251(b)(5).

IV. POSITION OF STAFF

Staff reviewed the Amendment in light of the criteria contained in Section 252(e)(2)(A) of the Act. Under this section, the Commission may only reject an agreement, or any portion thereof, adopted by negotiation under subsection (a) if it finds that (i) the agreement, or a portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement, or a portion thereof, is not consistent with the public interest, convenience, and necessity. Staff concluded that the Amendment does not discriminate against a telecommunications carrier not a party to the Amendment and that the implementation of the Amendment would be consistent with the public interest, convenience and necessity. The Commission concurs with Staff's position.

Concerning the implementation of the Amendment, Staff recommends that the Commission require Verizon, within five (5) days from the date the Amendment is approved, to modify its tariffs to reference the negotiated Amendment for each service. Staff states that this requirement is consistent with the Commission's Orders in previous negotiated agreement dockets and allows interested parties access to the Amendment. Staff recommends that such references be contained in the following section of Verizon's tariffs: Agreements with Telecommunications Carriers (ICC No. 10, Section 18). Staff also recommends that the Commission require that Verizon file a verified statement with the Chief Clerk of the Commission, within five (5) days from the date the Amendment is approved, that the approved Amendment is the same as the Amendment filed in this docket with the verified petition. Staff recommends that the Chief Clerk place the Amendment on the Commission's website under Interconnection Agreements. The Commission Staff's recommendations regarding implementation of the Amendment are reasonable and should be adopted.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) Verizon and NPCR are telecommunications carriers as defined in Section 13-202 of the Public Utilities Act, (220 ILCS 5/1-101 et seq.) which provide telecommunications services as defined in Section 13-203 of the Public Utilities Act;

- (2) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (4) the Amendment does not discriminate against a telecommunications carrier not a party to the Amendment and is not contrary to the public interest, convenience and necessity;
- (5) in order to assure that the implementation of the Amendment is in the public interest, Verizon should implement the Amendment by filing a verified statement with the Chief Clerk of the Commission, within five (5) days of approval by the Commission, that the approved Amendment is the same as the Amendment that was filed in this docket with the verified petition; the Chief Clerk should place the Amendment on the Commission's web site under Interconnection Agreements;
- (6) within five (5) days of the entry of this Order, Verizon should modify its tariffs to reference the negotiated Amendment in the manner recommended by Staff and described in the prefatory portion of this Order above;
- (7) the Amendment should be approved as hereinafter set forth;
- (8) approval of this Amendment does not have any precedential affect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Amendment to the Interconnection Agreement between Verizon North Inc., Verizon South Inc. and NPCR, Inc., d/b/a Nextel Partners is approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Verizon shall comply with Findings (5) and (6) hereinabove within five (5) days of the date of this Order.

IT IS FURTHER ORDERED that this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 22nd day of May, 2002.

(SIGNED) RICHARD L. MATHIAS

Chairman